

# HOUSE BILL REPORT

## SHB 1022

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### As Passed House:

March 3, 2009

**Title:** An act relating to statutory costs.

**Brief Description:** Modifying statutory cost provisions.

**Sponsors:** House Committee on Judiciary (originally sponsored by Representatives Williams, Warnick, Kelley, Rodne, Dickerson and Moeller).

### Brief History:

#### Committee Activity:

Judiciary: 1/14/09, 1/29/09 [DPS].

#### Floor Activity

Passed House: 3/3/09, 97-0.

### Brief Summary of Substitute Bill

- Allows, expressly, a plaintiff to recover certain costs of bringing a lawsuit.
- Applies if, after a civil lawsuit for the recovery of money is filed, the defendant offers and the plaintiff accepts full or partial payment of the amount sued for, and the plaintiff gave the defendant prior written notice that the defendant may still be liable for those costs in addition to the payment accepted.

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## HOUSE COMMITTEE ON JUDICIARY

**Majority Report:** The substitute bill be substituted therefor and the substitute bill do pass. Signed by 11 members: Representatives Pedersen, Chair; Goodman, Vice Chair; Rodne, Ranking Minority Member; Shea, Assistant Ranking Minority Member; Flannigan, Kelley, Kirby, Ormsby, Roberts, Ross and Warnick.

**Staff:** Kate Moeur (786-5793)

### Background:

Generally, in civil actions, "statutory costs" — a party's expenses in an action — are not recoverable by the prevailing party unless permitted by contract, statute, or some recognized

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ground in equity. However, there are statutes that allow a prevailing party to recover his or her statutory costs which can include a statutory attorney fee.

Statutory costs may include filing fees, service of process fees, reasonable expenses incurred in obtaining records, witness fees, and a statutory attorney fee. The statutory attorney fee is generally \$200. However, in district court cases, the prevailing party is not entitled to the statutory attorney fee if the judgment is for less than \$50. If the judgment is at least \$50 but less than \$200, the statutory attorney fee is \$125.

A defendant is entitled to costs if, before the action is commenced, the defendant offered to pay the full amount owed to the plaintiff and the plaintiff refused the offer. A defendant is also entitled to costs if, after an action is commenced, the defendant deposits with the court the amount the defendant believes is owed plus costs, and the plaintiff refuses to accept it and subsequently recovers a lesser amount than offered.

"Prevailing party" is defined in different ways for different purposes. For example, in actions involving \$10,000 or less, a plaintiff or party seeking relief is deemed a prevailing party when the recovery, excluding costs, is as much as or more than the amount offered in settlement. For actions regarding the enforcement of contract or lease provisions, prevailing party means the party in whose favor final judgment is rendered.

#### **Summary of Substitute Bill:**

A plaintiff is the prevailing party and is therefore entitled to costs if, after an action for the recovery of money is commenced, the defendant offers and the plaintiff accepts full or partial payment of the amount sued for, and the plaintiff had given the defendant prior written notice that the defendant could still be liable for costs regardless of full or partial payment. Upon application by the plaintiff who is the prevailing party, the court is to enter a judgment for those costs, except those costs that are paid before entry of judgment.

The same provision applies to cases in district court. However, the plaintiff is not entitled to the statutory attorney fee portion of costs unless the amount asked for in the complaint, exclusive of costs, is \$50 or more. In a case where the amount asked for is at least \$50 but less than \$200, the statutory attorney fee is \$125.

Nothing prevents a party from demanding, offering, or accepting payment of statutory costs before entry of judgment. The act may not be interpreted to authorize an award of costs if the action is resolved by a negotiated settlement or to limit or bar statutory or judicial cost-shifting provisions.

**Appropriation:** None.

**Fiscal Note:** Not requested.

**Effective Date:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) This bill does not change current law. Rather, it clarifies the meaning of "prevailing party" in this context. This bill is designed to address those defendants who tender the principle of a debt and try to walk away without paying statutory costs associated with the action. It does not affect a party's ability to negotiate for a waiver of the payment of costs. This bill has not been opposed in the past. The bill codifies the existing procedures employed in small balance cases and makes the statute clearer. The intent of this legislation is to reduce the barriers to settling a lawsuit while protecting the ability of a party to collect hard costs.

(Neutral) The Association is not opposed to this bill, but it may work with the sponsors on amendments.

(Opposed) None.

**Persons Testifying:** (In support) Kevin Underwood and Greg Luhn, Washington Collectors Association.

(Neutral) Tammy Fellin, Association of Washington Cities.

**Persons Signed In To Testify But Not Testifying:** None.